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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

§ Civil Action No. H-01-3624
§ **(Consolidated)**

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

VS.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On Behalf
of All Others Similarly Situated,

Plaintiffs,

VS.

KENNETH L. LAY, et al.,

Defendants.

**LEAD PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL THE BANKS
TO PRODUCE THE TRANSCRIPTS OF THE SWORN STATEMENTS OF THEIR
CURRENT AND FORMER EMPLOYEES**

1840

The Banks' primary opposition to Lead Plaintiff's motion to compel production of sworn statements of their employees is that Judge Gonzalez should decide whether the Banks, parties in this action, respond to Lead Plaintiff's discovery requests served in this case and that Lead Plaintiff does not really need the discovery. Meanwhile, Enron and its Creditors' Committee are filing cases using the information in the sworn statements which number "well in excess of 100." *See* Emergency Motion of Official Committee of Unsecured Creditors for Authorization to Commence Litigation against Vinson & Elkins, et al. filed November 21, 2003 at p.10 attached.

This Court is the appropriate one to decide whether Lead Plaintiff's motion to compel should be granted. While the sworn statements at issue were taken by the Examiner, there is no reason to treat them differently than other sworn statements in the hands of the witnesses or their employers. The Banks argue that because the sworn statements were taken by the Examiner, Judge Gonzalez should decide whether they are produced to Lead Plaintiff. They argue he should decide because he is in the best position to decide if production would have a "chilling" effect on future examiners' investigations.¹ Since the Creditors' Committee has made clear that it has read the sworn statements and is relying on them for its proposed prosecution of claims, it is hard to imagine that the production to Lead Plaintiff will have an adversely different "chilling" effect. Notably, Enron has already sued several of the Banks relying on that same testimony and documents gathered by the Examiner. Thus, the Banks' desire to keep the Examiner's investigation separate from discovery in the civil litigation has already been thwarted.

The Banks claim that Lead Plaintiff has no compelling need for the transcripts. The Court has charged Lead Plaintiff with prosecuting this case on behalf of the class and has set a discovery


¹ The Enron Examiner's work is complete. He has issued his fourth and final report. Production of the sworn statements will therefore have no impact on his investigation.

cutoff in one year. The production of witnesses' transcripts will surely aid Lead Plaintiff in the efficient and cost-effective litigation of this case. Certainly Lead Counsel can take numerous depositions of the same witnesses, but given that other litigants have the benefit of these transcripts, there is simply no valid basis to conceal this evidence from Lead Plaintiff.

DATED: December 1, 2003

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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:
In re: : Chapter 11
:
ENRON CORP., ET AL., : Case No. 01-16034 (AJG)
:
Debtors. : Jointly Administered
:
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**EMERGENCY MOTION OF OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR ORDER UNDER 11 U.S.C. §§ 105(a), 1103(c) AND
1109(b) FOR AUTHORIZATION TO COMMENCE LITIGATION AGAINST
VINSON & ELKINS LLP, ANDREWS & KURTH LLP, KIRKLAND & ELLIS LLP,
ARTHUR ANDERSEN LLP, MARK A. FREVERT, REBECCA P. MARK, JAMES V.
DERRICK, JR., JEFFREY MCMAHON, CARL FASTOW, AS ADMINISTRATOR OF
THE FASTOW FAMILY FOUNDATION, AND CERTAIN INSIDER EMPLOYEES**

The Official Committee of Unsecured Creditors (the
"Creditors' Committee") of Enron Corp. and its affiliated
debtors and debtors in possession (collectively, "Enron" or the
"Debtors") in the above-captioned, jointly administered chapter
11 cases (the "Bankruptcy Cases"), hereby files this emergency
motion (the "Motion") for an order, pursuant to sections 105(a),
1103(c) and 1109(b) of title 11 of the United States Code, 11
U.S.C §§ 101-1330, as amended, (the "Bankruptcy Code"),

authorizing the Creditors' Committee to commence litigation on behalf of the Debtors' estates asserting certain claims for turnover, preference and fraudulent transfer under sections 544, 547, 548 and 550 of the Bankruptcy Code and/or other applicable law (collectively, the "Avoidance Actions") in the Bankruptcy Court and asserting certain state law claims as described below by joining additional parties to the case styled Official Committee of Unsecured Creditors of Enron Corp. v. Andrew S. Fastow, et. al., No. 02-10-06531-CV, in the 9th Judicial District Court of Montgomery County, Texas (the "Montgomery County Action"), and respectfully states as follows:

I. INTRODUCTION

1. The Creditors' Committee seeks authorization to commence the Avoidance Actions against Vinson & Elkins LLP ("V&E") and Andrews & Kurth LLP ("A&K") and, together with V&E, the "Firms") to avoid and recover all alleged preferential transfers to the Firms made within the ninety days preceding the date the Debtors filed the Bankruptcy Cases (the "Petition Date"). The Creditors' Committee also seeks to assert Avoidance Actions against Mark A. Frevert ("Frevert") and Rebecca P. Mark ("Mark") to avoid and recover alleged fraudulent transfers to Frevert¹ and Mark made within one year or other applicable statutory period

¹ Frevert may also be the recipient of an Insider Employee Transfer and the Creditors' Committee reserves the right to prosecute such claims against Frevert.

before the Petition Date. Additionally, the Creditors' Committee seeks to assert Avoidance Actions against certain or all of the insider employees of the Debtors² set forth on attached Exhibit A (the "Insider Employees" and, together with the Firms, Prevert, and Mark, the "Avoidance Transferees") to avoid and recover alleged preferential and/or fraudulent transfers to the Insider Employees within ninety days and/or one year or other applicable statutory period before the Petition Date (the "Transfer Periods").

2. The Creditors' Committee also seeks authorization to commence state law claims against V&E, A&K, Kirkland & Ellis LLP ("K&E"), Arthur Andersen LLP ("Andersen"), James V. Derrick, Jr. ("Derrick") and Jeffrey McMahon ("McMahon") (collectively the "State Court Defendants") for negligence, malpractice, breach of fiduciary duty, breach of contract, aiding and abetting breach of fiduciary duty, civil conspiracy, gross

² The Creditors' Committee notes that the Court has already authorized the Official Employment-Related Issues Committee (the "Employee Committee") to investigate and commence avoidance actions against certain former Enron employees that received (i) bonuses within 90 days of Enron Corp. filing for bankruptcy. See Order of Final Approval, Under 11 U.S.C. §§ 105(a), 363(b), 1103(c)(5) And 1109(b) And Fed. R. Bankr. P. 9019, Approving Settlement of Similarly-Situated Claimants and Authorizing the Official Employment-Related Issues Committee to Commence Certain Avoidance Actions on Behalf of Estates, dated August 28, 2002, and (ii) accelerated distributions from certain deferred compensation plans between October 25, 2001 and November 30, 2001 and Order Pursuant to Sections 105(a), 363(b), 1103(c) and 1109(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (1) Approving the Compromise and Settlement of Potential Preference and Fraudulent Transfer Claims Against Certain of Debtors' Current and Former Employees and (2) Authorizing Official Employment Related Issues Committee to Commence Litigation on Behalf of the Estate With Respect to Certain of Such Claims. By this Motion, the Creditors' Committee does not seek authority to pursue any avoidance actions that the Court has already authorized the Employee Committee to pursue.

negligence, fraud, money had and received, accounting, constructive trust and claims for exemplary damages (collectively, the "State Law Claims"), but specifically excluding any claims for turnover, preference and fraudulent transfer.

3. On October 1, 2002, the Court authorized the Creditors' Committee to commence the Montgomery County Action against certain former Enron officers and employees in a Texas State Court of competent jurisdiction. On the same day, the Creditors' Committee filed an action against Andrew Fastow, Ben Glisan, Jr., Richard B. Buy, Richard A. Causey, Jeffrey K. Skilling, Kenneth S. Lay, Kristina M. Mordaunt, Kathy Lynn and Anne Yaeger -Patel based on these defendants' alleged wrongful conduct.

4. Since the filing of the Montgomery County Action, the Committee has continued investigating the role of certain professionals and other Enron officers and employees in connection with the financial collapse of Enron and has worked closely with Neal Batson, the Examiner for Enron Corp. (the "Examiner"), with respect to claims that may be advanced to redress said wrongdoing. In addition to its own investigation, the Creditors' Committee has had the benefit of the Examiner's conclusions from his investigation as set forth in the First, Second and Third Interim Reports. The Creditors' Committee has

concluded that the Debtors hold significant claims for damages and other relief against the State Court Defendants under applicable state law.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105 (a), 1103(c) and 1109(b) of the Bankruptcy Code.

III. RELIEF REQUESTED

6. The Creditors' Committee seeks to have this Motion heard on an expedited basis. Shortened notice is warranted because the statute of limitations applicable to the Avoidance Actions that the Creditors' Committee seeks authorization to commence expires on December 1, 2003. See 11 U.S.C. § 546(a)(1). Additionally, applicable statutes of limitations for the State Law Claims that the Creditors' Committee seeks authorization to commence begin to run again on that date. The Debtors and the Creditors' Committee only recently completed their investigation of the facts and circumstances underlying the Avoidance Actions and the State Law Claims and determined that the Creditors' Committee should assert such actions.

7. The Creditors' Committee seeks authorization to commence litigation on behalf, and for the benefit of, the Debtors' estates against the Avoidance Transferees and the State Court Defendants. The Debtors have indicated their support of the Motion, and the Court has previously authorized the Creditors' Committee to act as estate plaintiff in appropriate circumstances. See, Order Under 11 U.S.C. §§ 105(a), 1103(c) and 1109(b) Authorizing Committee to Commence Actions Against Arthur Andersen LLP on Behalf of Debtors Estates, dated September 19, 2002; Final Order Under 11 U.S.C. §§ 105(a), 1103(c) and 1109(b) Authorizing Official Committee of Unsecured Creditors to Commence Litigation Against Certain Former Officers, Directors and Employees of Enron Corp. and Its Affiliates on Behalf of Debtors' Estates, dated October 17, 2002; Order Under 11 U.S.C. §§ 105(a), 1103(c), and 1109(b) Authorizing Official Committee of Unsecured Creditors to Commence Actions Against Kenneth L. Lay and Linda P. Lay on Behalf of Debtors' Estates, dated January 31, 2003.

IV. BACKGROUND

8. Chapter 11 Filing. Commencing on December 2, 2001 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage

their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

9. Creditors' Committee. On December 12, 2001, the United States Trustee appointed the Creditors' Committee pursuant to section 1102 of the Bankruptcy Code. The Creditors' Committee represents the interests of all of Enron's unsecured creditors in the Bankruptcy Cases.

V. ARGUMENT

A. **The Creditors' Committee Should Be Authorized To Bring Avoidance Actions Against Avoidance Transferees And State Law Claims On Behalf Of Debtors' Estates**

10. It is well settled that sections 1103(c)(5) and 1109(b) of the Bankruptcy Code provide a qualified right to creditors' committees to commence actions in the name of the debtor in possession with the approval of the bankruptcy court. In re STN Enters., 779 F.2d 901, 904 (2d Cir. 1985) ("Most bankruptcy courts that have considered the question have found an implied, but qualified, right for creditors' committees to initiate adversary proceedings in the name of the debtor in possession under 11 U.S.C. §§ 1103(c)(5) and 1109(b), or in reliance on an implied continuation of creditors' committee powers under the pre -1978 Code.") (internal citations omitted).

11. The Court should confer such authority on a creditors' committee after considering (a) whether the "committee presents a colorable claim or claims for relief that

on appropriate proof would support a recovery" and (b) "whether an action asserting such claim(s) is likely to benefit the reorganization estate." Id. at 905.

12. The Avoidance Actions and State Law Claims are meritorious and each present "a colorable claim or claims for relief that on appropriate proof would support a recovery" and pursuing the Avoidance Actions and State Law Claims will benefit the Debtors' estates. STN Enters., 779 F.2d at 905. In determining whether a claim is colorable, a bankruptcy court should make a determination similar to that made in connection with a motion to dismiss. Official Comm. of Unsecured Creditors v. Austin Fin. Servs., Inc. (In re KDI Holdings, Inc.), 277 B.R. 493, 508 (Bankr. S.D.N.Y. 1999) (interpreting STN Enters.). A court must determine in a hearing prior to a creditors' committee's commencement of any action that the necessary findings exist to satisfy the STN Enterprises standard. Id.

(i) **Avoidance Actions Against Avoidance Transferees**

13. The Creditors' Committee submits that the necessary findings exist. The Creditors' Committee can amply demonstrate a prima facie case for each of the Avoidance Actions. The Avoidance Actions against the Firms state claims to avoid preferential transfers under section 547 of the Bankruptcy Code. All the available evidence indicates that the transfers to the Firms (i) consisted of property of the Debtors;

(ii) were made to or for the benefit of creditors; (iii) were made on account of antecedent debts; (iv) were made while the Debtors were insolvent; (v) were made within ninety days prior to the Petition Date; and (vi) enabled the Firms to receive more than they would likely receive in a chapter 7 liquidation of the Debtors (the "Preference Elements"). Nothing further is required to state a claim to avoid the transfers to the Firms under section 547(b) of the Bankruptcy Code.

14. The Creditors' Committee also submits that the Avoidance Actions against Frevert and Mark state claims to avoid fraudulent transfers under section 544, 548 and 550 of the Bankruptcy Code and/or other applicable laws. All the available evidence indicates that the transfers to Frevert and Mark (i) consisted of property of the Debtors; (ii) were made for the benefit of the Frevert and Mark; (iii) were made while Enron was insolvent; (iv) and were made for less than reasonably equivalent value to Enron (the "Fraudulent Transfer Elements")³. Again, nothing further is required to state a claim to avoid the transfers to Frevert and Mark under sections 544, 548 and 550 of the Bankruptcy Code and and/or other applicable laws.

³ The Third Interim Report of Neal Batson concludes that "Enron may be able to avoid the transfer of the \$1.036 million severance payment to Mark as a constructively fraudulent transfer. The Examiner also concludes that Enron can avoid a portion of the transfer of Frevert's deferred compensation plan a constructively fraudulent transfer in addition to the ground for avoidance previously reported on (as a preference)." Third Interim Report of Neal Batson, Court-Appointed Examiner, dated July 28, 2003, at Annex 3 to Appendix J at 10.

15. The Creditors' Committee further submits that the Avoidance Actions against the Insider Employees state claims to avoid preferential and/or fraudulent transfers under sections 544, 547, 548, and 550 of the Bankruptcy Code and/or other applicable laws. All of the available evidence indicates that the transfers to Insider Employee satisfy the Preference Elements and/or Fraudulent Transfer Elements.

(ii) **State Law Claims Against State Court Defendants**

16. The Creditors' Committee, as well as the Examiner, have thoroughly investigated the role and conduct of individual employees and officers of Enron that were involved in transactions that have been widely, and publicly, criticized. The Creditors' Committee and the Examiner also investigated the role and conduct of professional firms that either advised Enron's management and/or board or participated in structuring, documenting or otherwise facilitating the such transactions. Indeed, well in excess of 100 oral sworn statements have been taken and millions of pages of documents have been reviewed. Thus far, the Examiner has issued three reports, totaling 3,318 pages of text, in which the Enron Examiner has dissected "substantially all of Enron's material SPE transactions identified to date." The Examiner has explained precisely how SPEs were improperly used by insiders at Enron in conjunction

with specific accounting techniques "to impact dramatically in financial statements" in violation of GAAP.

17. The Examiner has identified several Enron senior officers, including McMahon, as being responsible for manipulating Enron's financial statements and has discussed specific claims that the Debtors has against such officers, including breaches of fiduciary duty. The State Law Claims that the Creditors' Committee proposes to initiate against McMahon are consistent with the Examiner's findings in his third report.

18. Fastow and Michael J. Kopper were also extensively criticized by the Examiner for breaching their fiduciary duties in connection with numerous SPE transactions and their involvement with the LJM partnerships. Fastow, Kopper and other insiders created various entities to conduct business with Enron, including Chewco, LJM1 and LJM2. They used these entities to profit personally at Enron's expense and caused Enron to enter transactions with these entities in breach of their fiduciary duties to Enron.

19. Fastow created the Fastow Family Foundation, in part, to receive profits arising from his self-dealing transactions with Enron in connection with the unwind of the Rhythms transaction. Fastow funneled approximately \$4.5 million of funds that he fraudulently obtained from Enron into the Foundation. Fastow's conduct with respect to this transaction

is already at issue in this Montgomery County Action. The DOJ has instituted a forfeiture action against the assets in the Foundation's bank account. Carl Fastow, as Administrator of the Fastow Family Foundation, may be a necessary party to the recovery of these funds for the Debtors' Estates.

20. Derrick was Enron's General Counsel, and as such, was responsible for properly overseeing his outside counsel and ensuring that Enron Board of Directors was properly advised of any problems with respect to Enron's transactions and financial statements. The Creditors' Committee's investigation has concluded that Derrick negligently failed to discharge his duties.

21. The Creditors' Committee and the Examiner also examined the role of Enron's professional firms. V&E was Enron's primary counsel on many transactional issues. Anderson was Enron's longtime auditor during the relevant time period and provided both auditing and consulting services to Enron.

22. K&E represented Fastow, Kopper and other insiders in connection with structuring Chewco, LJM1 and LJM2. Additionally, K&E represented these entities in many of the transactions they undertook with Enron. K&E's actions substantially assisted Fastow, Kopper and other insiders in breaching their fiduciary duties to Enron.

23. The Examiner has also thoroughly criticized the FAS 140 transactions of Enron in which A&K issued "true issuance opinions." The Creditors' Committee's investigation has concluded that A&K's conduct warrants the pursuit of claims against that firm for malpractice and other malfeasance.

**(iii) Avoidance Actions and State Law Claims
Will Benefit the Estates**

24. The prosecution of the Avoidance Actions and State Law Claims will benefit the Debtors' estates. In determining the potential benefit to the estates, a bankruptcy court should weigh the probability of success and the propriety, in terms of cost, of the creditors' committee, as opposed to a trustee or debtor in possession, being authorized to bring suit. Official Comm. Of Unsecured Creditors v. Hudson United Bank (In re America's Hobby Ctr., Inc.), 223 B.R. 275, 284 (Bankr. S.D.N.Y. 1998) (stating the bankruptcy court must "consider whether there is a fair chance that the benefits to be obtained from litigation will outweigh the cost"). For months, the Creditors' Committee has been investigating, with the Debtors' assistance and cooperation, potential claims of the estate against Avoidance Transferees and others. As a result of its ongoing investigation, the Creditors' Committee believes the Avoidance Actions and State Law Claims are meritorious and will likely benefit the Debtors' estates. Furthermore, the Creditors' Committee believes that the likelihood of success on

the merits and the likelihood of collecting amounts well in excess of the costs to reduce the Avoidance Actions and State Law Claims to judgment, justifies the expense of prosecuting the litigation.

B. The Creditors' Committee Is The Appropriate Party To Pursue Avoidance Actions and State Law Claims Against The State Court Defendants

25. The Creditors' Committee is well -positioned to pursue the Avoidance Actions and State Law Claims based on its investigation of these transactions t o date, with the encouragement and assistance of the Debtors, and is fully competent to bring the actions necessary to recover on the Avoidance Actions and State Law Claims. The Creditors' Committee submits that resolution of the Avoidance Actions and State Law Claims could potentially result in significant value for unsecured creditors and its prosecution is both a necessary and beneficial part of any efficient resolution to the resolution of the Bankruptcy Cases. The Debtors have consented to the Creditors' Committee's prosecution of the Avoidance Actions and State Law Claims. The Creditors' Committee now stands ready to commence litigation and to take all steps necessary to reduce the Avoidance Actions and State Law Claims to judgment for the benefit o f the Debtors' estates. See In re Commodore Int'l, Ltd., 262 F.3d 96, 100 (2d Cir. 2001) (granting standing to commence adversary proceedings to creditors'

committee when committee had secured the approval of the debtors in possession prior to commencing the action).

26. Accordingly, the Creditors' Committee submits that there is ample justification to grant the Creditors' Committee authority to pursue the Avoidance Actions and State Law Claims.

VI. TIMING OF AVOIDANCE ACTIONS

27. Section 546(a) of the Bankruptcy Code provides, in general, that no action to avoid a preferential or fraudulent transfer may be brought more than two years after the petition date. See 11 U.S.C. § 546(c). As of the date of the Motion, less than one month of the two -year limitations period remains. The Creditors' Committee has determined that the Avoidance Actions need to be commenced at this time.

VII. WAIVER OF MEMORANDUM OF LAW

28. The Creditors' Committee respectfully submits that the Motion raises no novel issues of law and respectfully requests that the Court waive the requirement of Local Rule 9013-1(b) of filing a separate memorandum of law.

VIII. NOTICE

29. Notice of the Motion has been given to all parties on the Service List as defined in the Second Amended Case Management Order Establishing, Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and

Alternative Methods of Participation at Hearings, dated December 17, 2002. The Creditors' Committee submits that such notice will be adequate and sufficient, and, therefore, no other or further notice is required.

IX. NO PRIOR REQUEST

30. No previous request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Creditors' Committee respectfully requests that the Court enter an order (i) granting the Creditors' Committee authority to commence the Avoidance Actions on behalf of the Debtors' estates against V&E, A&K, Frevert, Mark, and the Insider Employees pursuant to sections 105(a), 1103(c) and 1109(b) of the Bankruptcy Code in the Bankruptcy Court; (ii) granting the Creditors' Committee authority to commence the State Law Claims on behalf of the Debtors' Estates against V&E, A&K, K&E, Andersen, Derrick, McMahon, and Carl Fastow, as Administrator of the Fastow Family Foundation by joining these claims with other claims currently pending in the Montgomery County Action and (iii) granting the Creditors' Committee such additional and further relief as the Bankruptcy Court deems just and appropriate.

Dated: New York, New York
November 21, 2003

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EXHIBIT A

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BIBI, PHILLIPPE A
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CAUSEY, RICHARD A
DELAINEY, DAVID W
DERRICK JR., JAMES V
DIMICHELE, RICHARD G
FALLON, JAMES B
FASTOW, ANDREW S
FITZGERALD, JAY L
GLISAN JR, BEN F
GRAY, RODNEY
HERMANN, ROBERT J
HUAG, DAVID
IZZO, LAWRENCE
KISHKILL, JOSEPH G
KOENIG, MARK E
KOPPER, MICHAEL J
LAY, KENNETH L
MARTIN, AMANDA K
MCMAHON, JEFFREY
OXLEY, DAVID
PAI, LOU L
PICKERING, MARK R
RICE, KENNETH D
SHELBY, REX
SHERRIFF, JOHN R
SKILLING, JEFFREY K
THORN, TERENCE H
WHITE, JR., THOMAS E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
: Chapter 11
:
ENRON CORP., ET AL., : Case No. 01-16034 (AJG)
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:
Debtors. : Jointly Administered
----- x

ORDER UNDER 11 U.S.C. §§ 105(a), 1103(c) AND
1109(b) FOR AUTHORIZATION TO COMMENCE LITIGATION AGAINST
VINSON & ELKINS LLP, ANDREWS & KURTH LLP, KIRKLAND & ELLIS LLP,
ARTHUR ANDERSEN LLP, MARK A. FREVERT, REBECCA P. MARK, JAMES V.
DERRICK, JR., JEFFREY MCMAHON, CARL FASTOW, AS ADMINISTRATOR OF
THE FASTOW FAMILY FOUNDATION, AND CERTAIN INSIDER EMPLOYEES

Upon the motion dated November 21, 2003 (the
"Motion"),⁴ of the Official Committee of Unsecured Creditors (the
"Creditors' Committee") of Enron Corp. and its affiliated
debtors and debtors in possession (collectively, the "Debtors")
in the above-captioned, jointly administered chapter 11 cases
(the "Bankruptcy Cases"), for an order pursuant to sections
105(a), 1103(c) and 1109(b) of the Bankruptcy Code authorizing
the Creditors' Committee to commence litigation in the
Bankruptcy Court with respect to Avoidance Actions only against
Vinson & Elkins LLP ("V&E"), Andrews & Kurth LLP ("A&K"), Mark
A. Frevert ("Frevert"), Rebecca P. Mark ("Mark"), and certain

⁴ Capitalized terms not defined herein shall have the meanings defined in
the Motion.

insider employees of the Debtors⁵ (the "Insider Employees" and collectively with V&E, A&K, Frevert, and Mark, the "Avoidance Transferees"); authorizing the Creditors' Committee to commence litigation in the Montgomery County Action against V&E, A&K, Kirkland & Ellis, LLP ("K&E"), Arthur Andersen, LLP ("Andersen"), James V. Derrick, Jr. ("Derrick"), Jeffrey McMahon ("McMahon") and Carl Fastow, as Administrator of the Fastow Family Foundation (the "Foundation" and collectively, the "State Court Defendants") with respect to state law claims, including malpractice, negligence, breach of fiduciary duty, aiding and abetting breach of fiduciary duty; fraud, civil conspiracy, gross negligence, money had and received, accounting, constructive trust, breach of the duty of care and claims for exemplary damages (collectively, the "State Law Claims"), but specifically excluding any claims for turnover, preference, fraudulent transfer and Avoidance Actions; and the Court having jurisdiction over these matters; and due and adequate notice of

⁵ The Creditors' Committee is not authorized to commence any avoidance actions against the Debtors' employees that the Court has previously authorized the Official Employment-Related Issues Committee (the "Employee Committee") to investigate and commence. See Order of Final Approval, Under 11 U.S.C. §§ 105(a), 363(b), 1103(c)(5) And 1109(b) And Fed. R. Bankr. P. 9019, Approving Settlement of Similarly-Situated Claimants and Authorizing the Official Employment-Related Issues Committee to Commence Certain Avoidance Actions on Behalf of Estates, dated August 28, 2002; Order Pursuant to Sections 105(a), 363(b), 1103(c) and 1109(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (1) Approving the Compromise and Settlement of Potential Preference and Fraudulent Transfer Claims Against Certain of Debtors' Current and Former Employees and (2) Authorizing Official Employment Related Issues Committee to Commence Litigation on Behalf of the Estate With Respect to Certain of Such Claims.

the Motion having been provided; and it appearing that no other or further notice need be given; and upon the record in these cases; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED, that the Creditors' Committee is hereby authorized to commence and pursue Avoidance Actions in the Bankruptcy Court under section 544, 547, 548 and 550 of the Bankruptcy Code to recover alleged preferential and/or fraudulent transfers from V&E and A&K made within the ninety days preceding the date the Debtors filed the Bankruptcy Cases; and it is further

ORDERED, that the Creditors' Committee is hereby authorized to commence and pursue Avoidance Actions in the Bankruptcy Court under section 544, 548 and 550 of the Bankruptcy Code to recover alleged fraudulent transfers from Frevert⁶ and Mark made within the year preceding the date the Debtors filed the Bankruptcy Cases; and it is further

ORDERED, that the Creditors' Committee is hereby authorized to commence and pursue Avoidance Actions in the Bankruptcy Court under sections 544, 547, 548 and 550 of the Bankruptcy Code and/or other applicable law against the Insider Employees to recover alleged preferential and/or fraudulent

⁶ The Creditors' Committee is also authorized to commence an avoidance action against Frevert to the extent he qualifies as an Insider

transfers from the Insider Employees made within ninety days and/or one year or other applicable statutory period preceding the date the Debtors filed the Bankruptcy Cases; and it is further

ORDERED, that the Creditors' Committee is hereby authorized to commence and pursue the State Law Claims, excluding turnover, preference, and fraudulent transfer claims and Avoidance Actions, against the State Law Defendants in the Montgomery County Action; and it is further

ORDERED, that all claims for turnover, preference, fraudulent transfer and Avoidance Actions against the State Law Defendants are hereby reserved by this Court except to the extent stated above; and it is further

ORDERED that this Order shall be without prejudice to the right of the Creditors' Committee to seek authorization to bring additional claims against the Avoidance Transferees, State Court Defendants or any other party.

Dated: New York, New York
_____, 2003

UNITED STATES BANKRUPTCY JUDGE

Employee and the Employee Committee has not been authorized to commence such avoidance action.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re: :
: Chapter 11
:
ENRON CORP., ET AL., : Case No. 01-16034 (AJG)
:
:
Debtors. : Jointly Administered
----- x

DECLARATION OF DAVID S. COHEN IN SUPPORT OF SCHEDULING ORDER
FIXING DATE AND TIME TO CONSIDER CREDITORS' COMMITTEE'S
EMERGENCY MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105(a), 1103(c)
AND 1109(b) AUTHORIZING OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO COMMENCE LITIGATION AGAINST VINSON & ELKINS LLP,
ANDREWS & KURTH LLP, MARK A. FREVERT, REBECCA P. MARK, JAMES V.
DERRICK, JR., JEFFREY MCMAHON, CARL FASTOW, AS ADMINISTRATOR OF
THE FASTOW FAMILY FOUNDATION, AND CERTAIN INSIDER EMPLOYEES

DAVID S. COHEN, a member of the law firm of Milbank,
Tweed, Hadley & McCloy LLP, attorneys for the Official Committee
of Unsecured Creditors (the "Creditors' Committee") of Enron
Corp. and its affiliated debtors and debtors in possession
(collectively, the "Debtors") in the above-captioned, jointly
administered chapter 11 cases (the "Bankruptcy Cases"), hereby
declares pursuant to section 1746 of title 28 of the United
States Code:

1. I am a member of the law firm of Milbank, Tweed,
Hadley & McCloy LLP, having an office located at International
Square Building, 1825 Eye Street, N.W., Suite 1100, Washington,
DC 20006 ("Milbank"). Milbank has been retained to act as

attorneys for the Creditors' Committee under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. I submit this declaration in support of the scheduling order fixing date and time for an expedited hearing (the "Hearing") to consider the motion, dated November 21, 2003 (the "Motion")¹ of the Creditors' Committee for an order authorizing the Creditors' Committee to commence certain litigation.

3. I am aware of the facts and circumstances relating to the Motion, and unless otherwise stated herein, I have personal knowledge of the facts set forth herein.

4. Pursuant to the Motion, the Creditors' Committee requests entry of an order, pursuant to sections 105(a), 1103(c), and 1109(b) of the Bankruptcy Code, (a) granting the Creditors' Committee authority to commence the Avoidance Actions on behalf of the Debtors' estates against Vinson & Elkins LLP ("V&E"), Andrews & Kurth LLP ("A&K"), Mark A. Frevert ("Frevert"), Rebecca P. Mark ("Mark"), and the Insider Employees; and (b) granting the Creditors' Committee authority to commence the State Law Claims on behalf of the Debtors' Estates against V&E, A&K, Kirkland & Ellis LLP, Arthur Andersen LLP, James V. Derrick, Jr., Jeffrey McMahon, and Carl Fastow, as

¹ All capitalized terms not defined herein shall have their meanings ascribed to them in the Motion.

Administrator of the Fastow Family Foundation by joining these claims with other claims currently pending in the Montgomery County Action. With respect to such Claims, the statute of limitations may begin to expire on December 2, 2003.

5. Pursuant to the Second Amended Case Management Order Establishing, Among Other Things, Noticing Procedures, Hearing Dates, Independent Website and Alternative Methods of Participation at Hearings, dated December 17, 2002, unless otherwise shortened, a hearing to consider the Motion and the relief requested therein would not be held until December 18, 2003, sixteen (16) days after the expiration of the applicable statute of limitations periods. Accordingly, the Debtors request that the Court shorten the applicable notice/hearing period from twenty-five (25) days to ten (10) days and to have the Motion heard on December 1, 2003.

6. No previous application for the relief requested in the Motion has been made by the Creditors' Committee to this or any other court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
November 21, 2003

/s/ David S. Cohen
David S. Cohen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re: :
: Chapter 11
:
ENRON CORP., ET AL., : Case No. 01 -16034 (AJG)
:
:
Debtors. : Jointly Administered
----- x

SCHEDULING ORDER FIXING DATE AND TIME TO CONSIDER
CREDITORS' COMMITTEE'S EMERGENCY MOTION FOR AN ORDER UNDER
11 U.S.C. §§ 105(a), 1103(c) AND 1109(b) AUTHORIZING OFFICIAL
COMMITTEE OF UNSECURED CREDITORS TO COMMENCE LITIGATION
AGAINST VINSON & ELKINS LLP, ANDREWS & KURTH LLP, MARK A.
FREVERT, REBECCA P. MARK, JAMES V. DERRICK, JR., JEFFREY
MCMAHON, CARL FASTOW, AS ADMINISTRATOR OF THE FASTOW
FAMILY FOUNDATION, AND CERTAIN INSIDER EMPLOYEES

Upon the annexed motion (the "Motion"), dated November 21, 2003, filed by the of the Official Committee of Unsecured Creditors (the "Creditors' Committee") of Enron Corp. and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above -captioned, jointly administered chapter 11 cases (the "Bankruptcy Cases") for an order pursuant to sections 105(a), 1103(c) and 1109(b) of the Bankruptcy Code authorizing the Creditors' Committee to commence litigation in respect of certain claims (the "Claims") against Vinson & Elkins LLP ("V&E"), Andrews & Kurth LLP ("A&K"), Mark A. Frevert ("Frevert"), Rebecca P. Mark ("Mark"), James V. Derrick, Jr., Jeffrey McMahon, Carl Fastow, as Administrator of the Fastow

Family Foundation, and certain insider employees of the Debtors¹ (the "Insider Employees" and collectively with V&E, A&K, Prevert, and Mark, the "Avoidance Transferees"), and upon due deliberation and good and sufficient cause appearing therefore, it is hereby

ORDERED that a hearing to consider the Motion and the relief requested therein shall be held before the Honorable Arthur J. Gonzalez, United States Bankruptcy Judge, in Room 523 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 (the "Bankruptcy Court"), on December 1, 2003 at 10:00 a.m., or as soon thereafter as counsel may be heard (the "Hearing"); and it is further

ORDERED that, on or before November 21, 2003, the Creditors' Committee shall serve a copy of this Order and the Motion in accordance with the Court's Second Amended Case

¹ The Creditors' Committee is not authorized to commence any avoidance actions against the Debtors' employees that the Court has previously authorized the Official Employment -Related Issues Committee (the "Employee Committee") to investigate and commence. See Order of Final Approval, Under 11 U.S.C. §§ 105(a), 363(b), 1103(c)(5) And 1109(b) And Fed. R. Bankr. P. 9019, Approving Settlement of Similarly -Situating Claimants and Authorizing the Official Employment -Related Issues Committee to Commence Certain Avoidance Actions on Behalf of Estates, dated August 28, 2002; Order Pursuant to Sections 105(a), 363(b), 1103(c) and 1109(b) of the Bankruptcy Code and Bankruptcy Rule 9019, (1) Approving the Compromise and Settlement of Potential Preference and Fraudulent Transfer Claims Against Certain of Debtors' Current and Former Employees and (2) Authorizing Official Employment Related Issues Committee to Commence Litigation on Behalf of the Estate With Respect to Certain of Such Claims.

Management Order Establishing, Among Other Things, Noticing Electronic Procedures, Hearing Dates, Independent Website and Alternative Methods of Participation At Hearings, dated December 17, 2002; and it is further

ORDERED that responses or objections, if any, to the Motion and the relief to be granted therein shall be made in writing, shall state with particularity the grounds therefor and shall conform to the Bankruptcy Rules and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M -242 (General Order M-242 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Bankruptcy Court), by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), Wordperfect or any other Windows -based work processing format (with a hard copy delivered directly to Chambers) and shall be served in accordance with General Order M-242 and upon: (a) the Office of the United States Trustee, 31 Whitehall Street, New York, New York 10004, (b) the United States Securities and Exchange Commission, Northeast Regional Office, 233 Broadway, 13th Floor, New York, New York 10279, Attn: Alistaire Bambach, Esq., (c) counsel to the Official Committee of Unsecured Creditors, Milbank, Tweed, Hadley & McCloy LLP, 1

Chase Manhattan Plaza, New York, NY 10005 -1413, Attn: Luc A. Despins, Esq., and (d) counsel to Enron Corp et al., Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Martin Bienenstock, Esq.; so as to be actually received by not later than 10:00 a.m. (New York time) on November 28, 2003; and it is further

ORDERED that, pursuant to Local Bankruptcy Rule for the Southern District of New York 9013 -1(b), the Court hereby waives the requirement that the Committee file a separate memorandum of law in support of the Motion.

Dated: New York, New York
November __, 2003

HONORABLE ARTHUR J. GON ZALEZ
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO COMPEL THE BANKS TO PRODUCE THE TRANSCRIPTS OF THE SWORN STATEMENTS OF THEIR CURRENT AND FORMER EMPLOYEES document has been served by sending a copy via electronic mail to serve@ESL3624.com on this 1st day of December, 2003.

I further certify that a copy of the foregoing document has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 1st day of December, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004


DEBORAH S. GRANGER